

**ZONING BOARD OF APPEALS**  
**MEETING MINUTES**  
**January 12, 2010**  
**4:00 P.M.**

**CALL TO ORDER:** Mr. John Stetler, called meeting to order at 4:02 p.m.

**ATTENDANCE:**

**Members Present:** Deland Davis, Greg Dunn, Mike Fatt, John Stetler, and Rick Barnes

**Members Excused:** James Moreno, Carlyle Sims, and Becky Squires

**Staff Present:** Jill Steele, Asst. City Attorney; Christine Hilton, Planning Supervisor; Glenn Perian, Senior Planner; and Leona Parrish, Planning Admin. Assistant.

**ADDITIONS OR DELETIONS TO THE AGENDA:** None

**OLD BUSINESS:** None

*Mr. John Stetler, Chairperson stated the meeting procedure and that everyone present may speak either for or against an appeal. He stated he will ask for a staff report to be read and then open the public hearing. At the public hearing persons may come forward and state their name and address for the record as it is being recorded and then speak either for or against an appeal. The public hearing will then be closed and the zoning board will discuss and make a decision. Mr. John Stetler stated if denied they may appeal to the Circuit Court.*

**NEW BUSINESS:**

**Appeal #Z-01-10: (584 E. Hamilton Lane)**

Mr. John Stetler stated for the record this was an appeal from Mr. John Scott, 584 E. Hamilton Ln., requesting a variance to waive the required front-yard fence height of 4 ft. and allow a 6ft. front-yard fence in an "R-1B Single Family Residential District" for property located at 584 E. Hamilton Lane, Parcel #4260-07-971-0. The fence permit application was denied because of Planning and Zoning Code, Chapter 1298.05 (b)(2).

Mr. Glenn Perian read the staff report regarding the variance request. Noted this property has an irregular shaped parcel that is pie shaped and does meet the minimum width according to the ordinance regarding lot size allowed. Stated as in the staff report; applicant has clearly demonstrated that a practical difficulty will in fact exist if not granted. Has not created a practical difficulty with their request; believes the practical difficulties are exceptional and peculiar because of the road frontage on three sides of the lot and does not have a conventional rear yard. That the alleged practical difficulties result from conditions which do not generally exist throughout the city in that most residential lots are interior lots. Furthermore, most corner lots typically have road frontage on only two sides and not three as in this case. Recommend approval of the dimensional variance based on the listed findings contained in the staff report with conditions.

Mr. John Scott, 584 E. Hamilton Lane (property owner) was present to speak. Stated the neighbors complained about the size of his garden and was willing to make it smaller; asked if he could use the invisible deer fence.

Mr. Greg Dunn stated he drove by the property and noted that the fence is higher than 4 feet. Mr. Scott stated yes, it is 6 ft. temporary fence.

Mr. Dunn asked Mr. Perian about the third side of the property that does not front the street; could the garden be placed in that area with a 6 ft. fence to keep the deer out.

Mr. Perian stated the city code states he can put the garden anywhere and could put the fence higher on the north side of his lot. Mr. Scott stated that side of his lot is not large enough for a garden and is too close to his neighbor.

Mr. Fatt asked if the aerial map shows the correct lot size and that it appears there is enough room for the garden and would not be in the neighbors space. Mr. Glenn Perian stated the aerial is only somewhat accurate. Mr. Scott stated the fenced in area is only approximately 10% of his yard area.

Mr. Davis stated the aerial photos might not be to scale. Mr. Perian stated that is correct.

Mr. Dunn stated the neighbors are not the issue; it is the fence height to protect his vegetables. That as the ordinance states he can have a garden in his whole yard if he wished.

Mr. Davis wondered how high deer can jump and contacted an expert who said that yes, deer can jump 6 ft. and that an 8 ft. fence is a rule of thumb to keep deer out. He asked Mr. Scott if the 6 ft. fence would be high enough. Mr. Scott stated the type of fence is made for deer and is made of material that they cannot see the top of the fence and would keep them out.

Mr. Barnes asked Mr. Scott if the trees on the north side would prevent the garden to be located in that area. Mr. Scott stated yes it would be too shady for a garden.

Mr. Michael Rollart, 573 E. Hamilton Ln. stated the petitioner has a vegetable and flower garden, but his concern as a neighbor is the future use if it is allowed and a new owner moved in and put a stockade fence 6 ft. high and expanded the garden all around; his view from his property would not be good.

Mr. John Stetler stated the variance could have a condition that the fence only be in a curtain area.

Mr. Rollert said the visual fence is best but who is to prevent someone putting up a different style of fence.

***Mr. Stetler asked Mr. Scott if he wanted to have a motion and vote on his appeal done today or table for a future meeting, when there would be more than five members in attendance.***

***Mr. Scott stated he would like a motion and vote done today.***

***Mr. John Stetler asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.***

**MOTION: MR. GREG DUNN MADE A MOTION TO APPROVE # Z-01-10 TO WAIVE THE REQUIRED FRONT-YARD FENCE HEIGHT OF 4 FT. AND ALLOW A 6 FT. FENCE IN AN "R-1B SINGLE FAMILY RESIDENTIAL DISTRICT" AS SUBMITTED AND TO INCLUDE THE RECOMMENDATIONS OUTLINED IN THE STAFF REPORT FOR PROPERTY LOCATED AT 584 E. HAMILTON LN.; MOTION NOT SUPPORTED-FAILED.**

**MOTION: MR. GREG DUNN MADE A MOTION TO APPROVE # Z-01-10 TO WAIVE THE REQUIRED FRONT-YARD FENCE HEIGHT OF 4 FT. AND ALLOW A 6 FT. FENCE IN AN "R-1B SINGLE FAMILY RESIDENTIAL DISTRICT" TO INCLUDE THE**

**RECOMMENDATIONS OUTLINED IN THE STAFF REPORT AND AS SHOWN IN  
PHOTO #P1020118.JPG FOR PROPERTY LOCATED AT 584 E. HAMILTON LN.;  
SUPPORTED BY MR. RICK BARNES.**

**Discussion:**

Mr. Mike Fatt stated he could not support as there were limitations on this property when purchased and there needs to be consideration for the neighbors in that it would appear unattractive. Feels it is self created and that they have other alternatives available to them.

Mr. John Stetler stated he understands that it is difficult because of the lot size and that he agrees with Mr. Fatt and does not meet condition #3 in that the applicant has created the hardship or practical difficulty.

Mr. Deland Davis stated he was concerned with the neighbor issues and if the fence could be lower as 6 ft. would not be high enough to keep the deer out.

**MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, BEING NONE A  
VOTE WAS TAKEN FOR THE VARIANCE; TWO IN FAVOR: DUNN, AND BARNES;  
THREE OPPOSED: DAVIS, FATT, AND STETLER: MOTION FAILED.**

**Vote No Findings \ Comments:**

Mr. Davis stated he voted no because he did not feel the petitioner demonstrated a hardship or practical difficulty would exist if the variance was not granted (Item #1). And that the alleged hardship or practical difficulty is exceptional and peculiar to the property and result from conditions which do not generally exist throughout the city (Item #4).

Mr. Mike Fatt feels that the petitioner has other alternatives available to them.

Mr. John Stetler stated he did feel the lot size was a hardship, but that if approved it would not be harmonious with the neighborhood.

Mr. John Stetler, Chairperson, stated the petitioner has the option to appeal the decision of the Zoning Board to the Circuit Court.

**Appeal #Z-02-10: (68 E. Emmett Street)**

Mr. John Stetler stated for the record this was an appeal from Steffel & Steffel Attorneys & Counsellors at Law on behalf of owners Mr. Richard Green & Marion Pinkerton, 68 E. Emmett St., Battle Creek, MI, requesting a use variance to allow an "R-1C Single Family Residential" zoned property to be used as an "R-2 Family Residential" for property located at 68 E. Emmett Street, Parcel #3170-00-058-0. The rental permit application was denied because of Planning and Zoning Code, Chapter 1246.02.

Mr. Perian read the staff report and findings noting staff feels there is not an unnecessary hardship for the property owner to use the land in a manner prohibited by the uses permitted in the R-1C zoning district. Staff does not believe the proposed use variance is in harmony with the general purpose and intent of the zoning code and thinks the property could be converted to a single-family use permitted in the R-1C district. Understand there will be a loss of rental income in doing so. Stated as in the staff report, they understand that the two-family use and building may have been in operation for a period of time in the past. Said they do not think that by granting the proposed use variance that it will serve as anything more than a convenience to the applicant from converting the

property to single-family use. Do not think that the granting of a use variance will alleviate some demonstrable and unusual hardship so great as to warrant a variation from the master plan and recommend this variance be denied.

Mr. Ken Beaver, Steffel & Steffel Attorneys and Counsellors at Law, was present to speak on behalf of property owner Ms. Marion Pinkerton and Mr. Richard Green. Mr. Beaver stated the property located at 68 E. Emmett Street has been used for the past two years as a two-unit. That in November 20, 2007 the inspection done showed no errors. Mr. Green has pulled permits to bring this property up to code and permits have been issued for two-units. States they have a hardship because of losing a rental unit and not able to have a tenant to live there and care for Ms. Pinkerton. States it is an unnecessary hardship and had pulled permits that had not been pulled in the past; noted this property has two meters, and two kitchens.

Mr. Beaver said they could have a nephew move in instead of an unknown tenant and that the past tenant had been evicted as they had not been a good tenant. Stated they are victims of non-representation by their real-estate etc. and this poor representation caused an unnecessary hardship.

Mr. Greg Dunn stated the staff report notes the rental registration was submitted and approved for a Single-Family Unit and that no permits were pulled to allow two-units.

Ms. Christine Hilton, Planning Supervisor stated that it was just discovered (as they spoke) that a building permit was found that allowed this property to be a two-unit (provided the board a copy of building permit). Ms. Hilton stated the legal non-conforming use was ceased because in 1997 it was registered as a single-family unit; in doing so it lost its non-conforming status.

Mr. Greg Dunn stated the records show it being zoned Single Family Residential.

Ms. Jill Steele explained the ordinance regarding non-conforming properties and that after one-year it loses its non-conformity if not used as such.

Mr. Greg Dunn asked the petitioner if they had any additional information to provide or documents to share.

Mr. Beaver made reference to exhibit (A- Rental Permit) stating it was a rental unit; and exhibit (B – Assessor Building Information) stating style was multiple units; both were submitted with their variance application. Mr. Beaver asked how can there be two electric meters etc. with a single family use.

Mr. John Stetler stated the staff report show this property to be zoned for one-unit.

Mr. Greg Dunn noted that in the visual appearance of this property; it does not appear to be a two-unit.

Mr. Beaver stated the inspection report showed as having no violations.

Ms. Christine Hilton stated the rental inspection approved in 2007 was for a one-unit; and restated the loss of a non-conforming property.

Mr. Mike Fatt stated there could still be a caregiver living there without having one as a rental unit.

Mrs. Jill Steele concurred with Mr. Fatt and noted there was evidence showing when it ended being a non-conforming property.

Mr. John Stetler agreed that they could have a caregiver live there without renting out a unit and asked Mr. Green if they were in agreement with this possibility.

Mr. Beaver stated that Mr. Green could not comment at this time. Mr. Beaver noted that it cannot be confirmed this property was ever changed to a single-unit and was not still used as a two-unit. Stated they want to make it work without a lawsuit.

***Mr. Stetler asked Mr. Green if he wanted to have a motion and vote on his appeal done today or table for a future meeting; when there would be more than five members in attendance.***

***MR. BEAVER STATED MR. GREEN WOULD LIKE TO RESERVE THE RIGHT TO TABLE AT THIS TIME UNTIL MORE MEMBERS ARE IN ATTENDANCE.***

***MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, BEING NONE A VOTE WAS TAKEN FOR TO TABLE THIS VARIANCE; ALL IN FAVOR: NONE OPPOSED: MOTION TO TABLE APPROVED.***

**Persons Wishing to Speak in Favor or Opposition:**

Ms. Mary Knapp, 105 Central Street came forward to speak in opposition; stated her and her husband live on the corner of Emmett Street and Central and is asking to have this appeal denied. Stated she was asked to read a letter from Ms. Lanie Ganey, who lives at 58 E. Emmett Street, in opposition. (Noted for the record the Planning Department had received a copy in the mail and had handed-out copies to board members and appellant).

Mr. Tom Stoner, 55 Woolnough, stated he lives behind the appellant and understands their miss fortune but is concerned for the future and also the surrounding property values. Stated it does not breed a good family atmosphere.

Mr. Rick Barnes asked Mr. Stoner if there has been a renter in this property. Mr. Stoner stated he was aware of only one renter.

Mr. Lorin Granger, 54 E. Emmett Street, stated he lives two houses to the west; his concern is if they changed the zoning to allow a caregiver to rent, there would then be a concern of parking as it would require (4) parking spaces.

Mr. David Nielsen, 44 Latta Street, stated he is the NPC #4 Chairperson and representative. Noted they are concerned with the number of rental properties within their area. Stated they want to preserve the single-family neighborhood and want to limit rental properties, as there are already many within the city. He asked that this use variance be denied on behalf of NPC #4.

Mr. John Stetler asked if the NPC #4 had met on this appeal. Mr. Nielsen stated, no, but will at their next meeting.

Ms. Jean Bixler, 58 Woolnough Ave., stated they have a strong neighborhood and can continue to be strong as long as they remain single-family homes. Said they do not want their neighborhood to become like North Avenue.

Mr. Beaver stated the board have the ability to address concerns and is asking it to be used as it has been in the past. Said the owners are asking to have someone help them. Noted that in 1947 it was approved and no evidence that it had ever stopped and asked if the space could be used for a caregiver for now.

Ms. Jill Steele stated that if it were to be used for a caregiver there might need to have some alterations done so it is not two separate dwellings.

Mr. Greg Dunn asked that the letters received in opposition be noted for the record. They are as follows: Ms. Lanie Ganey, 58 E. Emmett Street and Mr. Scott Cubberly, 68 E. Emmett Street.

***Mr. John Stetler asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close.***

**Appeal #Z-03-10: (5050 Beckley Road)**

Mr. John Stetler stated for the record this was a petition of Sun Hospitality Inc., 5050 Beckley Rd., Battle Creek, MI, requesting a variance to allow continued use of a Legal Non-conforming sign in a "C-6 Major Highway Interchange District" for property located at 5050 Beckley Road, Parcel #0086-00-910-1. The Sign Permit application was denied because of Planning and Zoning Code, Chapter 1296.28.

Mr. Glenn Perian stated the variance request is a dimensional variance for a sign panel to be used for the existing sign that has already been installed without a permit. Mr. Perian read the staff report and noted staff does not see a practical difficulty and that the hardship is more than a mere inconvenience. Mr. Perian recommends the board can approve, approve with conditions, or deny this request. The Zoning Board of Appeals can also table or postpone the request pending additional information. Planning staff recommends that the Zoning Board of Appeals deny the sign variance based on the findings contained in the staff report.

Mr. Sunil Patel, Sun Hospitality Inc., 5050 Beckley Rd., and Rhonda Pinkerton, 7734 Bunkerhill, Jackson, MI was present to speak. Stated that the former Ramada Inn will now become Howard Johnson; it is the same owner, just different hotel name because of the not having a bar it is now in a different classification.

Ms. Rhonda Pinkerton stated they pulled a sign permit three times for the change in signage and had talked to Mr. Frank Ballard and had also sent emails. Stated Mr. Ballard verbally said it would be alright to do the sign change. Noted that if he would have said that the ordinance had changed they would not have ordered the new sign. She noted the first permit was said to be lost, submitted a second permit with payment and then received both copies with Mr. Ballard's signature being approved.

Ms. Pinkerton stated Mr. Perian, Senior Planner said the sign was not within the ordinance and that she would not have had her customer order a \$4,000 dollar sign and \$1,900 fee to install if she had known. Said that asking them to reduce the sign size would be worse than taking them out of the phone book and that a 25 sq. ft. sign would be too small and would be an unnecessary hardship to the owner.

Mr. Patel stated they had not tried to do anything without the city's permission. Noted the property has been there for many years and they bought the property in 2003, and have struggled since. Stated the current sign has been there always with no signage on the building and that times are hard and they are trying to re-coop business; that it would cost \$35,000 to redo a new sign with electric it could be up to

\$50,000 dollars, and that other businesses have a sign higher than his and would put him at an disadvantage.

Ms. Rhonda Pinkerton referenced #6 on the jurisdiction checklist; noting a financial hardship to tear down and redo new. Noted they would be invisible to I-94 and would not bring any business from the highway. Stated there are other options that are available that come with at a high price when they are already struggling. Said they could just change the face on the old sign.

Mr. Greg Dunn stated it has two parts; financial and practical difficulty. He would have to deny for financial and practical difficulty based on the standards needed to be followed. Noted if they approved based on the need to have traffic ability to see from the highway; all other property owners would also want the same for their businesses.

Mr. Patel stated their hotel is dependent on transit business and having the sign higher would increase their business.

Mr. Greg Dunn asked Mr. Perian if there were other grandfathered signs in the area. Mr. Perian stated there are some and that he believes that the Fairfield might want to reface their also; noted according to the code, those along I-94 are allowed more height because of the grade.

Mr. John Stetler asked if other signs in that area had been approved to be higher. Mr. Perian stated he was not aware of any.

Mr. Deland Davis asked regarding Mr. Frank Ballard approving sign permit.

Mr. Perian stated since Ms. Christine Hilton, Planning Supervisor had been hired; the planning department are now reviewing and approving in regards to the zoning. Noted the permits were approved and signed by the Inspection department, but the permit had not been signed off for approval by the Planning and Zoning department.

Mr. Davis noted that on the 11/30/09 permit copy it shows the zoning administrator had not signed off for approval.

Mr. Greg Dunn asked the appellant if they have receipt of approval of the permit.

Ms. Rhonda Pinkerton stated Mr. Frank Ballard verbally said yes; and in the past the old permits had previously been approved, she was not aware of any change in the ordinance.

Mr. Greg Dunn asked if in the past when the sign had been changed twice; did they never have to get the Zoning Boards approval; Ms. Rhonda Pinkerton stated, no they did not.

Ms. Rhonda Pinkerton stated if they needed another change in the future; Mr. Patel would build a new sign to code. Said they did not know when this sign was purchased it was not allowed.

***Mr. Stetler asked Mr. Patel if he wanted to have a motion and vote on his appeal done today or table for a future meeting, when there would be more than five members in attendance.***

*Mr. Patel stated he would like a motion and vote done today.*

*Mr. John Stetler asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.*

**MOTION: MR. GREG DUNN MADE A MOTION TO APPROVE # Z-03-10 TO ALLOW CONTINUED USE OF A LEGAL NON-CONFORMING SIGN IN AN "C-6 MAJOR HIGHWAY INTERCHANGE DISTRICT" AS SUBMITTED WITH STIPULATION THAT ANY FUTURE SIGN CHANGES REQUIRE ZONING BOARD APPROVAL OR BE BUILT TO CODE; FOR PROPERTY LOCATED AT 5050 BECKLEY ROAD; SUPPORTED BY MR. RICK BARNES.**

**Discussion:**

Mr. Glenn Perian stated it is the intention of the City to bring all signs up to code.

Mr. Greg Dunn suggested the city tell businesses in advance for any future changes regarding signs. Mr. Glenn Perian suggested it could be noted in the newspaper for everyone and not just those on Beckley Road.

Mr. Greg Dunn stated this property had two signs previously approved without the Zoning Boards approval and he is sympathetic with the property owner. Mr. Dunn stated he disagrees with the staff report.

Mr. John Stetler asked if there were any response from Mr. Frank Ballard. Ms. Christine Hilton stated Mr. Ballard did not have any response and that he should be reminded of the process for approvals.

Mr. Rick Barnes stated the applicant tried to do as they were told by the City. Ms. Christine Hilton stated they had not received a permit for the sign.

Mr. Greg Dunn stated that they would need to appeal again if the sign were to be changed again.

Mr. Deland Davis stated there might be more to come before them as none of the sign permits were signed off for the zoning. Mr. Perian stated he was not aware of any others.

Ms. Jill Steele noted to the board that if it were approved today, they need to show practical difficulty, findings, or that they did not create this practical difficulty.

Mr. John Stetler stated the new sign does stand out.

***MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, BEING NONE A VOTE WAS TAKEN FOR THE VARIANCE; TWO IN FAVOR: DUNN, AND BARNES; THREE OPPOSED: DAVIS, FATT, AND STETLER: MOTION FAILED.***

**Vote No Findings \ Comments:**

Mr. Deland Davis, Mr. Mike Fatt and Mr. John Stetler stated they voted no; as they are all in agreement with the findings noted in the staff report (#1.thru #10.)



Mr. John Stetler, Chairperson, stated the petitioner has the option to appeal the decision of the Zoning Board to the Circuit Court.

**APPROVAL OF MINUTES:**

Mr. Mike Fatt noted a correction to be made on page 4, 2<sup>nd</sup> paragraph, 2<sup>nd</sup> from last sentence; the word emphasizes should have been empathizes.

**MOTION: WAS MADE BY MR. DELAND DAVIS TO APPROVE THE NOVEMBER 10, 2009 ZONING BOARD OF APPEALS MINUTES WITH THE ABOVE NOTED CORRECTION REQUESTED BY MR. MIKE FATT; SUPPORTED BY MR. RICK BARNES. ALL IN FAVOR, NONE OPPOSED, MOTION CARRIED - APPROVED.**

**COMMENTS BY THE PUBLIC:** None

**COMMENTS BY THE MEMBERS / STAFF:**

Mr. James Moreno, Zoning Board member who was excused at today's meeting provided his comments on the appeals presented to the board today. (E-mail from Mr. Moreno was handed-out)

**ADJOURNMENT:** Mr. John Stetler moved for the meeting to be adjourned; all in favor, meeting was adjourned at 6:07 p.m.

**Enclosed Attachments Noted In Minutes:**

**Referenced Under - Appeal #Z-01-10 (584 E. Hamilton Lane):**

- ***(Item #1)*** Photo # P1020118.JPG (From staff report referenced in Motion)

**Referenced Under - Appeal # Z -02-10 ( 68 E. Emmett Street):**

- ***(Item #2)*** Letter in opposition from Lanie Ganey
- ***(Item #3)*** Letter in opposition from Scott Cubberly
- ***(Item #4)*** Application for Building Permit dated: June 18, 1947

**Referenced Under - Staff Comments:**

- ***(Item #5)*** Submitted by ZBA member Mr. James Moreno

Submitted by: Leona A. Parrish  
Administrative Assistant, Planning Department